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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/725,611

12/02/2003

Kenneth A. Martin

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05/26/2006

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EXAMINER

COE, SUSAN D

ART UNIT

PAPER NUMBER

1655

DATE MAILED: 05/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/725,611	<b>Applicant(s)</b> MARTIN ET AL.	
	<b>Examiner</b> Susan D. Coe	<b>Art Unit</b> 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-17,20 and 22-32 is/are pending in the application.
- 4a) Of the above claim(s) 7,9,10,13-15,29 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,8,11,12,16,17,20,22-28,31 and 32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The amendment filed March 23, 2006, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 5, 18, 19, and 21 have been cancelled.
3. Claims 1-4, 6-17, 20, and 22-32 are pending.
4. In the replies filed on July 29, 2005 and November 1, 2005, applicant elected with traverse Group I, claims 1-28, 31, and 32, 2-amino-2-deoxyglucose sulfate for species A, wheat and soy for species B, chocolate flavoring for species C, vitamins B, C, and E for species D, wheat for species E, saturated fat for species F, sugar and artificial sweetener for species G, fruit ingredient for species H, selenium and boron for species I, and bromelain and pepsin for species J.
5. Claims 7, 9, 10, 13-15, 29, and 30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on July 29, 2005.
6. Claims 1-4, 6, 8, 11-12, 16, 17, 20, 22-28, 31, and 32 are examined on the merits solely in regards to the elected species.

### ***Priority***

7. Applicant argues that priority for the claims to the parent US Pat. No. 6,660,308 should be granted because the current application repeats a “substantial portion” of US ‘308. Applicant argues that the currently claimed food bar is “similar” to the beverage composition of US ‘308

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“yet only in a different form” and “incorporates many of the similar ingredients, except protein or fiber to make it into a solid form.” The examiner believes that applicant’s own arguments underline the key differences between US ‘308 and the current applicant. The disclosure of US ‘308 does not enable a food bar. US ‘308 did not discuss solid forms or the ingredients that would need to be added to make a solid form. US ‘308 does not indicate that any form other than the beverage form would be an appropriate and feasible form for the composition. Thus, US ‘308 does not support a solid form; therefore, priority to this reference for the claims drawn to food bars cannot be granted.

***Claim Rejections - 35 USC § 103***

8. Claims 1-4, 6, 8, 11, 12, 16-17, 20, 22-27, 31, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over US. Pat. Pub. No. 2003/0152642, US Pat. No. 6,149,939, and US Pat. No. 66,32,449 for the reasons set forth in the previous Office action.

All of applicant’s arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that US ‘642 does not teach using the fat as a binder. However, paragraph 47 of the reference specifically teaches using vegetable oil (a fat) as a binder.

In addition, applicant argues that US ‘642 does not teach using a digestive enzyme or methyl sulfonyl methane (MSM) in the composition. However, US ‘642 is not intended to stand alone. The rejection is based on the combination of US ‘642, US ‘939, and US ‘449. As discussed in the previous Office action, US ‘939 teaches using bromelain (a digestive enzyme) in

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food bars to treat arthritis and US '449 teaches using MSM to treat arthritis. Thus, it is considered obvious to add these ingredients to the arthritis treatment composition of US '642.

Applicant also argues that the claimed food bar allows for a large dosage of glucosamine to be administered which will bypass the gut and will eliminate adverse reactions. However, US '642 teaches using amounts of glucosamine that are encompassed by applicant's claims. For example, US '642 teaches a 70 gram food bar in Example 1. Table 2 shows that 1.5% of this food bar is glucosamine. This equals 1050mg of glucosamine in the food bar. This falls within the amounts claimed by applicant. Thus, since the references together teach using the same amount of glucosamine as claimed in combination with the same ingredients as claimed, the food bar taught by the combination of the references would intrinsically have to have the same properties as the claimed food bar.

Applicant also argues that US '939 and US '449 do not remedy the deficiencies of US '642; however, US '642 is not considered deficient for the reasons discussed above.

9. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over US. Pat. Pub. No. 2003/0152642, US Pat. No. 6,149,939, and US Pat. No. 6,632,449 as applied to claims 1-4, 6, 8, 11, 12, 16-17, 20, 22-27, 31, and 32 above, and further in view of US 5,840,715.

The inclusion of US '449 technically makes this a new ground of rejection. However, applicant's arguments regarding US '715 are still applicable to this new rejection. Applicant argues that US '715 does not remedy the deficiencies of US '642; however, US '642 is not considered deficient for the reasons discussed above.

10. Claims 20 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US. Pat. Pub. No. 2003/0152642, US Pat. No. 6,149,939, and US Pat. No. 6,632,449 as applied to claims

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1-4, 6, 8, 11, 12, 16-17, 20, 22-27, 31, and 32 above, and further in view of US Pat. No. 6,333,304.

The inclusion of US '449 technically makes this a new ground of rejection. However, applicant's arguments regarding US '304 are still applicable to this new rejection. Applicant argues that US '304 does not remedy the deficiencies of US '642; however, US '642 is not considered deficient for the reasons discussed above.

11. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over US. Pat. Pub. No. 2003/0152642, US Pat. No. 6,149,939, and US Pat. No. 6,632,449 as applied to claims 1-4, 6, 8, 11, 12, 16-17, 20, 22-27, 31, and 32 above, and further in view of US Pat. No. 6,624,148.

The inclusion of US '449 technically makes this a new ground of rejection. However, applicant's arguments regarding US '148 are still applicable to this new rejection. Applicant argues that US '148 does not remedy the deficiencies of US '642; however, US '642 is not considered deficient for the reasons discussed above.

### ***Double Patenting***

12. Claims 1-4, 8, 11, 12, 16, 17, 20, and 22-28 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/725,608 for the reasons set forth in the previous Office action.

Applicant did not address this rejection in the response. Thus, this rejection is still considered valid for the reasons of record.

13. No claims are allowed.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 9:30 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey, can be reached at (571) 272-0775. The official fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding can be directed to the receptionist whose telephone number is (571) 272-1600.

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A handwritten signature in black ink, appearing to read "Susan D. Coe".

S-23-06

Susan D. Coe  
Primary Examiner  
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